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lighting the streets. See *W. U. Tel. Co. v. Los Angeles Elec. Co.*, *supra*, 181. Whatever be the true rule at common law, the court rightly decided that, under the statute, the power company must bear the expense necessary to prevent injury, even though this involved improvements on the telephone line.

EQUITY — JURISDICTION — STREET RAILWAYS — FRANCHISES — INJUNCTION AGAINST PASSAGE OF A RESOLUTION INVOLVING A FORFEITURE. — A franchise contract between the city and a traction company provided for a forfeiture of all the rights under it in case certain construction work was not completed at a stipulated time. The municipal board, to which power was delegated, was about to pass a resolution declaring a forfeiture because of the non-performance of the conditions. The district court gave an order granting a permanent injunction against such action by the board. The city appealed. *Held*, that the order be reversed. *Gas & Electric Securities Co. v. Manhattan & Queens Traction Corp.*, 266 Fed. 625 (C. C. A.).

It is a well-recognized principle that equity will not enjoin the passage of municipal ordinances or resolutions which are legislative in character. See *Hatcher v. Dallas*, 133 S. W. (Tex.) 914, 921. Also see 23 HARV. L. REV. 470. The restraining power is limited ordinarily to enjoining the enforcement, rather than the passage, of *ultra vires* legislative measures by a municipality. See 4 POMEROY, EQ. JURIS., 4 ed., § 1763. The authorities uniformly hold that the granting of a franchise is a legislative function. See 1 NELLIS ON STREET RAILWAYS, 2 ed., § 22. The difficulty arises in determining whether the declaration of a forfeiture of a franchise is a legislative or a judicial question. The federal court falls into the error of concluding that if granting a franchise is a legislative act, the repealing of it necessarily must be of similar character. *Mercantile Trust Co. v. Denver*, 161 Fed. 769. It would seem that it is a judicial act as it involves the application with discretion of principles of law to the facts to determine whether the forfeiture has occurred. *Knickerbocker Trust Co. v. Kalamazoo*, 182 Fed. 865. And if there were such a forfeiture as to be abhorrent to equity, there should be no inherent lack of power to act. *North Jersey St. Ry. Co. v. South Orange*, 58 N. J. E. 83, 43 Atl. 53; *Noyes v. Anderson*, 124 N. Y. 175, 26 N. E. 316. The result in the present case may be justified by recognizing that the completion of the road is a condition precedent to the existence of a vested right under the franchise, and that the traction company was merely operating under a license. Hence in reality no forfeiture in the equitable sense was worked, and it is not incumbent upon equity to act.

EQUITY — PROCEDURE — PARTIES — INDISPENSABLE PARTIES — RIGHT OF SALESMAN OF A CORPORATION TO ENJOIN STRIKING EMPLOYEES WITHOUT JOINING THE CORPORATION AS PARTY PLAINTIFF. — The plaintiff, who received in addition to his salary as salesman a commission in proportion to the output of the corporation, sought to enjoin strikers from improperly interfering with the work of the employees of the company. The corporation was not joined as a party. If the corporation was a necessary party plaintiff, there was no such diversity of citizenship as to warrant the jurisdiction of the federal court. *Held*, that there was no jurisdiction. *Davis v. Henry*, 266 Fed. 261 (C. C. A.).

It is well established in equity that a party is indispensable if its rights will necessarily be affected by the decree, or if without the party, a final determination consistent with equitable principles is impossible. *Shields v. Barrow*, 17 How. (U. S.) 130; *Minnesota v. Northern Securities Co.*, 184 U. S. 199. So generally, where the plaintiff's interest is identified with that of the corporation and involves an internal matter of the corporation, the corporation is a necessary party plaintiff. *Consolidated Water Co. v. Babcock*, 76 Fed. 243; *Iron Molders' Union v. Niles-Bement-Pond Co.*, 258 Fed. 408. And if this

rule were not applied in the principal case, any employee, however subordinate, might conceivably obtain an injunction without the intervention of the corporation. Yet clearly the corporation would be affected by the result. Some cases appearing in conflict with the principal case are explicable on the ground that the corporation's interest was really dissimilar, or even antagonistic to the plaintiff's interest. See *Carroll v. Chesapeake & Ohio Coal Agency Co.*, 124 Fed. 305; *Doctor v. Harrington*, 196 U. S. 579. Other cases have allowed the holder of mortgage bonds to enjoin striking employees of a corporation, though the corporation was not joined as a party plaintiff. *Ex parte Haggerty*, 124 Fed. 441; *Jennings v. United States*, 264 Fed. 399. But cf. *Consolidated Water Co. v. City of San Diego*, 93 Fed. 849. Possibly these cases are distinguishable from the principal case, because of the distinct interest of the bondholder; but if not, it seems that the principal case enunciates the sounder rule of practice.

**INTERSTATE COMMERCE — CONTROL BY STATES — EXCESSIVE INSPECTION FEE AS A BURDEN ON INTERSTATE COMMERCE.** — A state statute required the inspection of all petroleum oil sold in the state, imposed a fee many times the cost of inspection, and declared a violation of the requirement a misdemeanor. Petitioner imported oil from other states and sold it partly by the original tank cars in which it was imported and partly by retail from such cars. Petitioner prayed that the enforcement of the statute against its business be enjoined. *Held*, that the collection of fees for the inspection of oil sold in the original tank cars be enjoined. *Texas Co. v. Brown*, 266 Fed. 577.

A state may not exclude nor interfere with the sale of objects of interstate commerce in their original packages. *Leisy v. Hardin*, 135 U. S. 100; *Schollenberger v. Pennsylvania*, 171 U. S. 1. It may, however, provide for their inspection and fix a fee for the same. *Red "C" Oil Co. v. North Carolina*, 222 U. S. 380; *Savage v. Jones*, 225 U. S. 501. A genuine inspection fee is valid even though somewhat excessive. *Patapsco Guano Co. v. North Carolina*, 171 U. S. 345; *Pure Oil Co. v. Minnesota*, 248 U. S. 158. But when a fee is so excessive as to indicate a disguised revenue measure it has, in recent decisions with which the principal case accords, been held an unconstitutional burden on interstate commerce. *Foot v. Maryland*, 232 U. S. 494; *Bartels Northern Oil Co. v. Jackman*, 29 N. D. 236, 150 N. W. 576. This is so though the transit is ended and an identical fee is imposed on domestic goods. *Castle v. Mason*, 91 Ohio St. 296, 110 N. E. 463; *Standard Oil Co. v. Graves*, 249 U. S. 389. See also *Askren v. Continental Oil Co.*, 252 U. S. 444. These decisions seem to conflict with the authority holding that a state may impose a non-discriminatory property tax on interstate goods which, though still in their original packages, have come to rest within it. *Brown v. Houston*, 114 U. S. 622; *Pittsburgh & S. Coal Co. v. Bates*, 156 U. S. 577. The distinction may be that here, by making the so-called "inspection" tax a prerequisite to sale, the state is wrongfully attempting to regulate the disposition of goods still in interstate commerce. See *American Steel & Wire Co. v. Speed*, 192 U. S. 500, 521. See also **JUDSON, INTERSTATE COMMERCE**, §§ 18, 19. This technical distinction results, however, in this case, in unfair discrimination against domestic goods.

**MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — FALLING ASLEEP AS BREAKING COURSE OF EMPLOYMENT.** — Deceased was engaged in exceptionally fatiguing work, such that workers went out to rest for a few minutes every "now and then." Deceased went a hundred yards to another building, lay down on a pile of bricks and slept three hours. The foreman, as a joke, threw a brick on the roof, to wake him. The brick passed through the roof and struck him in the stomach, causing fatal injuries. Plaintiff, a